

REMARKS

The present Amendment is in response to the Office Action mailed February 23, 2006, in the above-identified application. Enclosed herewith is a Petition requesting a two-month extension of time for re-setting the deadline for responding to the Office Action from May 23, 2006, to and including July 23, 2006.

In the Office Action, the Examiner objected to the Abstract of the Disclosure because it is in claim format. In response, Applicants have amended the Abstract of the Disclosure as indicated above. Thus, the amended Abstract of the Disclosure is deemed to satisfy the requirements of MPEP §608.01(b).

The Examiner objected to the claim language, asserting that there exists an inconsistency between the language of claim 1 and that of claim 5 dependent thereon. In response Applicants respectfully assert that claims 1-4 are directed to the subcombination of an instrument. Claim 1 has been amended to make this clear. Claim 5 has been amended to be directed to a combination including the instrument and an intervertebral spacer.

The Examiner rejected claims 1-9 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 801,151 to McKeever. Referring to FIGS. 1 and 2 thereof, McKeever discloses a wrench including a fixed jaw 2 having a recessed inner face 5 for engagement with a nut and a concave surface 6 for engagement with a pipe, and a movable jaw 9 having a recessed inner face 13 for engagement with a nut and a concave surface 11 for engagement with a pipe. The fixed jaw 2 and the movable jaw 9 are connected together at pivot point 10. A leaf spring 14 is positioned between the fixed jaw 2 and the movable jaw 9 for normally urging the jaws away from one another into an

open position. The wrench includes a compression member 16 that is slideable toward a leading end thereof for closing the jaws.

Applicants note that there are significant differences between McKeever and the instrument shown and described in the present application. First, the inner surfaces of the pincers 807A, 807B of the present application (FIG. 8A) are curved, and the curved inner surfaces of the pincers extend to the distal end of the instrument. In addition, the instrument includes a compression slide 812 that is movable from a first position in which it is in contact with the second pincer (FIG. 8B) and a second position in which it is not in contact with the second pincer (FIG. 8A). Applicants, via the present Amendment, have slightly amended claims 1 and 6 to point out these differences.

Applicants respectfully assert that independent claim 1 is unanticipated by McKeever because the cited reference does not disclose or suggest an instrument having a "claw subassembly including a first pincer which is fixed at the distal end of the shaft and a second pincer which is selectively rotatable into and out of spacer holding association with said first pincer to hold and release, respectively, the spacer; and an actuation mechanism for selectively rotating the second pincer, wherein said first and second pincers have opposing curved surfaces that extend to a distal end of said instrument." Claims 2-5 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Applicants respectfully assert that claim 6 is unanticipated by McKeever because the reference neither discloses nor suggests a grasping instrument with "a sliding element which may be selectively translated into and out of engagement with said second pincer to close and open said pair of pincers, respectively." Clearly, McKeever's compression member 16 remains in contact with both the fixed jaw 2 and the

movable jaw 9 at all times (FIG. 2). In contrast, the compression slide 812 shown in FIG. 8A of the present application is not in contact with both pincers at all times. Specifically, the compression slide 812 is not in contact with the second pincer when the compression slide is retracted. For these reasons, Applicants respectfully assert that claim 6 is unanticipated by McKeever and is otherwise allowable. Claims 7-9 are unanticipated, *inter alia*, by virtue of their dependence from claim 6, which is unanticipated for the reasons set forth above.

The Examiner rejected claims 1-9 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11, 1-10 and 1-12 of U.S. Patent Nos. 6,976,988, 6,807,716 and 6,478,801, respectively. Applicants note that the three above-identified patents are assigned to SpineCore, Inc., which is the assignee of the present application. In response, Applicants enclose herewith a Terminal Disclaimer to overcome the three patents identified by the Examiner.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Application No.: 10/771,597

Docket No.: SPINE 3.0-447 CONT

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Respectfully submitted,

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